

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1052

Citations Affected: IC 9-13-2-49.7; IC 9-24-10-4; IC 9-26-1; IC 9-30-5; IC 34-30-12-1; IC 35-50-1-2.

Synopsis: Motorist duties at an accident and operating while intoxicated. Conference committee report for EHB 1052. Requires an examination for a learner's permit to test the applicant's knowledge of the duty to stop and provide assistance. Provides that the law requiring a driver involved in an accident to stop at the accident scene, notify the appropriate law enforcement agency, and render reasonable assistance applies if the accident results in the entrapment of a person in a vehicle. (Under current law, the law applies only if the accident results in the injury or death of a person.) Provides that if the driver is physically incapable of notifying the appropriate law enforcement agency or rendering reasonable assistance, the duty to notify or to render reasonable assistance is imposed on a passenger in the driver's vehicle who is capable of discharging the duty if the passenger is: (1) at least 15 years of age and holds a learner's permit or driver's license; or (2) at least 18 years of age. Provides that a passenger commits a Class C misdemeanor if the passenger fails to notify or to render reasonable assistance when the duty is imposed upon the passenger. Provides that a person who knowingly, intentionally, or recklessly violates the law requiring a driver or a passenger to take certain actions at the scene of an accident commits a Class C misdemeanor, and provides that a passenger is immune from civil liability for providing emergency care. Specifies that felony resisting law enforcement and operating while intoxicated (OWI) causing serious bodily injury are crimes of violence. Makes OWI committed by a person with a previous conviction for OWI causing death, serious bodily injury, or with a minor in the vehicle a Class C felony. Permits a court to require a license suspension imposed as the result of a conviction for operating while intoxicated to be imposed before or after, or both before and after, any period of incarceration. Makes leaving the scene of an accident after committing operating while intoxicated causing serious bodily injury a Class B felony. **(This conference committee report: Removes the Class A felony enhancement for: (1) operating while intoxicated with a blood alcohol content greater than .15% causing death; and (2) leaving the scene of an accident after committing operating while intoxicated causing death. Specifies that a passenger in a vehicle involved in an accident is criminally liable for failing to render aid only if the passenger knew that the driver was incapable of rendering aid, and provides that the passenger is immune from civil liability for providing aid. Removes a provision making OWI causing serious bodily injury a Class C felony and OWI causing serious bodily injury committed by a person with**

a previous conviction for OWI a Class B felony. Makes OWI committed by a person with a previous conviction for OWI with a minor in the vehicle a Class C felony.)

Effective: July 1, 2008.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1052 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 9-13-2-49.7 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2008]: **Sec. 49.7. "Entrapment" means a confining circumstance**
- 5 **from which escape or relief is difficult or impossible.**
- 6 SECTION 2. IC 9-24-10-4 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Except as
- 8 provided in subsection (c), an examination for a learner's permit must
- 9 consist of a test of the applicant's eyesight **and knowledge of**
- 10 **IC 9-26-1-1.5.** All other examinations must include the following:
- 11 (1) A test of the following of the applicant:
- 12 (A) Eyesight.
- 13 (B) Ability to read and understand highway signs regulating,
- 14 warning, and directing traffic.
- 15 (C) Knowledge of Indiana traffic laws, **including**
- 16 **IC 9-26-1-1.5.**
- 17 (2) An actual demonstration of the applicant's ability to exercise
- 18 ordinary and reasonable control in the operation of a motor
- 19 vehicle under the type of permit or license applied for.
- 20 (b) The examination may include further physical and mental
- 21 examination that the bureau finds necessary to determine the
- 22 applicant's fitness to operate a motor vehicle safely upon Indiana

highways. The applicant must provide the motor vehicle used in the examination.

(c) The bureau shall waive the actual demonstration required under subsection (a)(2) for a person who has passed a driver's education class and a road test given by a commercial driver training school or a high school driver education program.

(d) The bureau shall adopt rules under IC 4-22-2 specifying requirements for a road test given under subsection (c) by a commercial driver training school or a high school driver education program.

SECTION 3. IC 9-26-1-1, AS AMENDED BY P.L.210-2005, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. The driver of a vehicle involved in an accident that results in the injury or death of a person **or the entrapment of a person in a vehicle** shall do the following:

(1) Immediately stop the **driver's** vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) **Subject to section 1.5(a) of this chapter**, determines the need for and renders reasonable assistance to each person injured **or entrapped** in the accident, including the removal or the making of arrangements for:

(i) the removal of each injured person **from the scene of the accident** to a physician or hospital for medical treatment; **and**

(ii) **the removal of each entrapped person from the vehicle in which the person is entrapped.**

(3) **Subject to section 1.5(b) of this chapter**, immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the:

(A) state police department, if the accident occurs before January 1, 2006; or

(B) bureau, if the accident occurs after December 31, 2005.

SECTION 4. IC 9-26-1-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. (a) If:**

(1) the driver of a vehicle is physically incapable of determining the need for or rendering assistance to any injured or entrapped person as required under section 1(2)(C) of this chapter;

(2) there is another occupant in the vehicle at the time of the accident who is:

(A) at least:

(i) fifteen (15) years of age and holds a learner's permit issued under IC 9-24-7-1 or a driver's license issued under IC 9-24-11; or

(ii) eighteen (18) years of age; and

(B) capable of determining the need for and rendering reasonable assistance to injured or entrapped persons as provided in section 1(2)(C) of this chapter; and

(3) the other occupant in the vehicle knows that the driver of the vehicle is physically incapable of determining the need for or rendering assistance to any injured or entrapped person; the vehicle occupant referred to in subdivisions (2) and (3) shall immediately determine the need for and render reasonable assistance to each person injured or entrapped in the accident as provided in section 1(2)(C) of this chapter.

(b) If:

(1) the driver of a vehicle is physically incapable of giving immediate notice of an accident as required under section 1(3) of this chapter;

(2) there is another occupant in the vehicle at the time of the accident who is:

(A) at least:

(i) fifteen (15) years of age and holds a learner's permit issued under IC 9-24-7-1 or a driver's license issued under IC 9-24-11; or

(ii) eighteen (18) years of age; and

(B) capable of giving notice as provided in section 1(3) of this chapter; and

(3) the other occupant in the vehicle knows that the driver of the vehicle is physically incapable of giving immediate notice of an accident;

the vehicle occupant referred to in subdivisions (2) and (3) shall immediately give notice of the accident by the quickest means of communication as provided in section 1(3) of this chapter.

(c) If there is more than one (1) vehicle occupant to whom subsection (a) applies, it is a defense to a prosecution of one (1) vehicle occupant under subsection (a) that the defendant reasonably believed that another occupant of the vehicle determined the need for and rendered reasonable assistance as required under subsection (a).

(d) If there is more than one (1) vehicle occupant to whom subsection (b) applies, it is a defense to a prosecution of one (1) vehicle occupant under subsection (b) that the defendant reasonably believed that another occupant of the vehicle gave the notice required under subsection (b).

SECTION 5. IC 9-26-1-2, AS AMENDED BY P.L.210-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. The driver of a vehicle involved in an accident that does not result in injury or death of a person **or the entrapment of a person in a vehicle** but that does result in damage to a vehicle that is driven or attended by a person shall do the following:

(1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the driver or occupant of or person attending each vehicle involved in the accident.

(3) If the accident results in total property damage to an apparent extent of at least one thousand dollars (\$1,000), forward a written report of the accident to the:

(A) state police department, if the accident occurs before January 1, 2006; or

(B) bureau, if the accident occurs after December 31, 2005; within ten (10) days after the accident.

SECTION 6. IC 9-26-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) If:

(1) the driver of a vehicle is physically incapable of making ~~an immediate~~ or a written report of an accident as required by this chapter; and

(2) there was another occupant in the vehicle at the time of the accident capable of making ~~an immediate~~ or a written report; the occupant shall make or cause to be made the report not made by the driver.

(b) If:

(1) the driver of a vehicle is physically incapable of making an immediate or a written report of an accident as required by this chapter;

(2) there was no other occupant; and

(3) the driver is not the owner of the vehicle;

the owner of the vehicle involved in the accident shall, within five (5) days after the accident, make the report not made by the driver.

SECTION 7. IC 9-26-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A person who **knowingly or intentionally** fails to stop or comply with section 1(1) or 1(2) of this chapter after causing injury to a person commits a Class A misdemeanor. However, the offense is:

(1) a Class D felony if:

(A) the accident involves serious bodily injury to a person; or

(B) within the five (5) years preceding the commission of the offense, the person had a previous conviction of any of the offenses listed in IC 9-30-10-4(a); ~~and~~

(2) a Class C felony if the accident involves the death of a person;

1 **and**

2 **(3) a Class B felony if the person knowingly or intentionally**
 3 **fails to stop or comply with section 1(1) or 1(2) of this chapter**
 4 **after committing operating while intoxicated causing serious**
 5 **bodily injury (IC 9-30-5-4).**

6 (b) A person who **knowingly or intentionally** fails to stop or
 7 comply with section 3 or 4 of this chapter after causing damage to the
 8 property of another person commits a Class B misdemeanor.

9 SECTION 8. IC 9-26-1-9 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2008]: Sec. 9. A person who **intentionally,**
 11 **knowingly, or recklessly** violates section 1(3), **1.5,** 2(1), or 2(2) of this
 12 chapter commits a Class C misdemeanor.

13 SECTION 9. IC 9-30-5-3 IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2008]: Sec. 3. **(a) Except as provided in**
 15 **subsection (b),** a person who violates section 1 or 2 of this chapter
 16 commits a Class D felony if:

17 (1) the person has a previous conviction of operating while
 18 intoxicated that occurred within the five (5) years immediately
 19 preceding the occurrence of the violation of section 1 or 2 of this
 20 chapter; or

21 (2) the person:

22 (A) is at least twenty-one (21) years of age;

23 (B) violates section 1(b) or 2(b) of this chapter; and

24 (C) operated a vehicle in which at least one (1) passenger was
 25 less than eighteen (18) years of age.

26 **(b) A person who violates section 1 or 2 of this chapter, or**
 27 **subsection (a)(2) of this section, commits a Class C felony if:**

28 **(1) the person has a previous conviction of operating while**
 29 **intoxicated causing death (IC 9-30-5-5); or**

30 **(2) the person has a previous conviction of operating while**
 31 **intoxicated causing serious bodily injury (IC 9-30-5-4).**

32 SECTION 10. IC 9-30-5-10, AS AMENDED BY P.L.172-2006,
 33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2008]: Sec. 10. (a) In addition to a criminal penalty imposed
 35 for an offense under this chapter or IC 14-15-8, the court shall, after
 36 reviewing the person's bureau driving record and other relevant
 37 evidence, recommend the suspension of the person's driving privileges
 38 for the fixed period of time specified under this section. **The court**
 39 **may require that a period of suspension recommended under this**
 40 **section be imposed, if applicable, before a period of incarceration**
 41 **or after a period of incarceration, or both before and after a period**
 42 **of incarceration, as long as the suspension otherwise complies with**
 43 **the periods established in this section.**

44 (b) If the court finds that the person:

45 (1) does not have a previous conviction of operating a vehicle or
 46 a motorboat while intoxicated; or

47 (2) has a previous conviction of operating a vehicle or a
 48 motorboat while intoxicated that occurred at least ten (10) years
 49 before the conviction under consideration by the court;

50 the court shall recommend the suspension of the person's driving
 51 privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court shall order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, the court may grant probationary driving privileges under this subsection without requiring the installation of an ignition interlock device if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse. The person granted probationary driving privileges under this subsection shall pay all costs associated with the installation of an ignition interlock device unless the sentencing court determines that the person is indigent.

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 11. IC 34-30-12-1, AS AMENDED BY P.L.74-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This section does not apply to services rendered by a health care provider (as defined in IC 34-18-2-14 or IC 27-12-2-14 before its repeal) to a patient in a health care facility (as defined in IC 27-8-10-1).

(b) Except as provided in subsection (c), a person who comes upon the scene of an emergency or accident, **complies with IC 9-26-1-1.5**, or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from civil liability for any personal injury that results from:

(1) any act or omission by the person in rendering the emergency care; or

(2) any act or failure to act to provide or arrange for further medical treatment or care for the injured person;

except for acts or omissions amounting to gross negligence or willful or wanton misconduct.

(c) This subsection applies to a person to whom IC 16-31-6.5 applies. A person who gratuitously renders emergency care involving the use of an automatic external defibrillator is immune from liability for any act or omission not amounting to gross negligence or willful or wanton misconduct if the person fulfills the requirements set forth in IC 16-31-6.5.

(d) This subsection applies to an individual, business, or organization to which IC 16-31-6.5 applies. An individual, business, or organization that allows a person who is an expected user to use an automatic external defibrillator of the individual, business, or organization to in good faith gratuitously render emergency care is immune from civil liability for any damages resulting from an act or omission not amounting to gross negligence or willful or wanton misconduct by the user or for acquiring or providing the automatic external defibrillator to the user for the purpose of rendering the emergency care if the individual, business, or organization and the user fulfill the requirements set forth in IC 16-31-6.5.

(e) A licensed physician who gives medical direction in the use of a defibrillator or a national or state approved defibrillator instructor of a person who gratuitously renders emergency care involving the use of an automatic external defibrillator is immune from civil liability for any act or omission of the licensed physician or instructor if the act or omission of the licensed physician or instructor:

(1) involves the training for or use of an automatic external defibrillator; and

(2) does not amount to gross negligence or willful or wanton misconduct.

SECTION 12. IC 35-50-1-2, AS AMENDED BY P.L.1-2006, SECTION 549, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this section, "crime of violence" means **the following**:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

(3) Voluntary manslaughter (IC 35-42-1-3).

(4) Involuntary manslaughter (IC 35-42-1-4).

(5) Reckless homicide (IC 35-42-1-5).

(6) Aggravated battery (IC 35-42-2-1.5).

(7) Kidnapping (IC 35-42-3-2).

(8) Rape (IC 35-42-4-1).

(9) Criminal deviate conduct (IC 35-42-4-2).

(10) Child molesting (IC 35-42-4-3).

(11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2).

(12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).

(13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1). ~~or~~

(14) **Operating a motor vehicle while intoxicated** causing death ~~when operating a motor vehicle~~ (IC 9-30-5-5).

(15) **Operating a motor vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).**

(16) **Resisting law enforcement as a felony (IC 35-44-3-3).**

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If the factfinder determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 13. [EFFECTIVE JULY 1, 2008] **IC 9-26-1-1, IC 9-26-1-2, IC 9-26-1-6, IC 9-26-1-8, IC 9-26-1-9, IC 9-30-5-3, IC 9-30-5-10, and IC 35-50-1-2, all as amended by this act, apply only to crimes committed after June 30, 2008.**

SECTION 14. [EFFECTIVE JULY 1, 2008] **IC 9-26-1-1.5, as added by this act, applies only to crimes committed after June 30,**

1 **2008.**

(Reference is to EHB 1052 as reprinted February 27, 2008.)

Conference Committee Report
on
Engrossed House Bill 1052

Signed by:

Representative Hoy
Chairperson

Senator Riegsecker

Representative Neese

Senator Lanane

House Conferees

Senate Conferees